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In re Application of  
ICHIMURA, et al.  
U.S. Application No.: 09/856,617  
PCT No.: PCT/JP99/06487  
Int. Filing Date: 19 November 1999  
Priority Date: 24 November 1998  
Attorney Docket No.: 766.52  
For: NOVEL POLYPEPTIDE

DECISION ON PETITION

UNDER 37 CFR 1.137(a)

This decision is in response to applicant's "Renewed Petition Under 37 CFR § 1.137(a)" filed 22 November 2004 in the United States Patent and Trademark Office (USPTO).

**BACKGROUND**

On 08 November 2004, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.137(a) to revive the present application.

On 22 November 2004, applicant filed a renewed petition under 37 CFR 1.137(a) and in the alternative a petition under 37 CFR 1.137(b).

**DISCUSSION**

**I. Petition Under 37 CFR 1.137(a)**

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already filed; (2) The petition fee as set forth in §1.17(i); (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) A terminal disclaimer (if necessary). Applicant previously satisfied item (1) and (2) above; item (4) is not applicable.

The arguments detailed in applicant's present renewed petition do not meet the exacting standards necessary for the petition to be granted. As explained in the See, Manual of Patent Examining Procedure (MPEP) § 711.03(c), delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute "unavoidable" delay. At a minimum, the error which ultimately lead to abandonment on 06 June 2003 (L: 2167 input 1469; found 1472) was

detailed in the error report of 04 December 2002 (Form PCT/DO/EO/916 mailed 09 January 2003) and not corrected in applicant's response of 22 January 2003.

As such, it is not possible to grant applicant's renewed petition under 37 CFR 1.137(a).

## II. Petition Under 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 22 November 2004 in the above-captioned application is hereby **GRANTED** as follows:

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant has satisfied items (1) - (4) above.

A review of the application file reveals that applicant has satisfied item (1) in providing a compliant Sequence Listing for the present application. As such, the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

### CONCLUSION

The renewed petition to revive under 37 CFR 1.137(a) is **DISMISSED**.

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The application has an international filing date of 19 November 1999 under 35 U.S.C. 363 and will be given a date of **24 May 2001** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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